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D.S., Appellant)
)
and) **Docket No. 21-1388**
) **Issued: May 12, 2022**
U.S. POSTAL SERVICE, PHILADELPHIA)
PROCESSING & DISTRIBUTION CENTER,)
Philadelphia, PA, Employer)
 _____)

Case Submitted on the Record

DECISION AND ORDER

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On September 21, 2021 appellant, through counsel, filed a timely appeal from a March 31, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

³ The Board notes that, following the March 31, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish bilateral carpal tunnel syndrome causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On December 13, 2019 appellant, then a 42-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome causally related to factors of her federal employment including driving power equipment, which required constant gripping of handles and twisting of the wrists. She noted that she first became aware of her condition on February 12, 2019 and realized its relation to her federal employment on March 12, 2019.⁴

An electromyogram/nerve conduction velocity (EMG/NCV) study of appellant's upper extremities obtained on April 5, 2019 demonstrated bilateral median neuropathies localized to the segment at the wrist consistent with carpal tunnel syndrome, moderate on the right and mild on the left.

In reports dated April 5 and May 3, 2019, Dr. Christopher Reid, a neurologist, diagnosed bilateral carpal tunnel syndrome, moderate on the right and mild on the left.

By decision dated February 26, 2020, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a firm diagnosis in connection with the claimed work factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 5, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a report dated February 6, 2020, Dr. William Ingram, II, a family practitioner, examined appellant and reviewed her history of injury. He noted that appellant had a right metatarsal fracture at work in 2013. On examination of her upper extremities, Dr. Ingram observed a positive Tinel's test, a negative Guyon's canal test, and a positive right scapholunate click with stress or provocation. He diagnosed work-related bilateral carpal tunnel syndrome, post-traumatic myofasciitis and sprain of the bilateral shoulders, and a ligament sprain of the right wrist. Dr. Ingram opined that all of appellant's symptoms were directly related to her work activities and usual duties as a mail handler, culminating on February 12, 2019. He explained that the abnormalities on her physical examination included Tinel's testing, laxity of the ligaments, and decreased sensation and weakness, noting that these were signs of her neuropathic and orthopedic diagnoses.

An EMG/NCV study, dated March 2, 2020, demonstrated early median neuropathy at the wrist level, with clinical correlation suggested.

⁴ Under OWCP File No. xxxxxx742, OWCP accepted that appellant sustained a right fracture of the metatarsal bones, closed dislocation of foot, and right shoulder sprain as a result of being struck from behind by an all-purpose container while in the performance of duty on March 4, 2014.

Following a preliminary review, by decision dated May 21, 2020, an OWCP hearing representative set aside the February 26, 2020 decision and remanded the case for further development, finding that OWCP's denial of the claim was incorrect, as the medical evidence of record at that time provided a firm diagnosis of bilateral carpal tunnel syndrome. The hearing representative further found that Dr. Ingram's February 6, 2020 report created an uncontroverted inference requiring further medical development by OWCP. On remand the hearing representative directed OWCP to prepare a statement of accepted facts (SOAF) and refer appellant for a second opinion examination regarding the medical connection between appellant's diagnosed bilateral carpal tunnel syndrome and the accepted exposure in her federal employment.

On August 3, 2020 OWCP referred appellant, along with a SOAF, to Dr. Steven Valentino, a Board-certified orthopedic surgeon, for a second opinion examination. The SOAF noted that appellant had a previously accepted claim for right fracture of the metatarsal bones, closed dislocation of foot, and right sprain of the shoulder and upper arm.

In a second opinion report dated August 26, 2020, Dr. Valentino noted his examination of appellant for evaluation of her bilateral carpal tunnel syndrome. He reviewed appellant's history of injury, a SOAF, and the medical record. On physical examination he observed negative Allen's, Wright's, Roos, Phalen's, reverse Phalen's, ulnar stretch, and Tinel's sign tests. Neurological examination demonstrated intact deep tendon reflexes with normal sensory examination. Dr. Valentino stated his impression of no evidence of a work-related injury. He explained that, based on his evaluation, appellant's symptoms were diffuse and not consistent with a specific diagnosis of bilateral carpal tunnel syndrome, and that as such, he could not relate any diagnosis related to the accepted factors of her federal employment.

In a report dated June 24, 2020, Dr. Ingram noted that he followed up with appellant for her upper extremity symptoms. On physical examination of the bilateral wrists, he observed positive Roos and bilateral Tinel's tests. Dr. Ingram diagnosed rotator cuff tear, labral tear, brachial plexopathy, long head of the biceps tear, and overuse syndrome of the right upper extremity.

By *de novo* decision dated September 17, 2020, OWCP denied appellant's occupational disease claim, based upon Dr. Valentino's August 26, 2020 second opinion report.

On September 23, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a report dated November 17, 2020, Dr. Ingram reviewed appellant's history of injury for evaluation and treatment of pain and dysesthesias of the upper extremities. On physical examination of the upper extremities, he observed deep tendon reflexes of "1-2/4" on the right and "2/4" on the left. Dr. Ingram further observed a positive Tinel's sign, a negative Guyon's canal test, and positive right scapholunate click with stress or provocation. He diagnosed work-related carpal tunnel syndrome, post-traumatic myofasciitis and sprain of the bilateral shoulders, and a ligament sprain of the right wrist, to be ruled out as a tear. Dr. Ingram opined that all of appellant's symptoms were directly related to her work activities and usual duties as a mail handler, culminating on February 12, 2019. He explained that the abnormalities on her physical examination included Tinel's testing, laxity of the ligaments, and decreased sensation and weakness, noting that these were signs of her neuropathic and orthopedic diagnoses. Under the heading of additional discussion, Dr. Ingram further explained that appellant performed

significantly physical and repetitive work, creating a cumulative trauma to her upper extremities involving the shoulder and bilateral wrists. In the course of performing these duties he continued, this activity led to trauma and inflammation in her upper extremities. Dr. Ingram noted that, in the performance of duty, appellant would operate a pallet jack, typically using the controls with one hand and the other to steer, and that this action required significant repetitive physical force. Appellant had performed this task for more than 10 years. Dr. Ingram further noted that EMG testing confirmed evidence of carpal tunnel syndrome. He opined within a reasonable degree of medical certainty that duties of appellant's federal employment traumatized her wrists, leading to inflammation and compression of the median nerve at the wrist, which ultimately led to carpal tunnel syndrome in its full clinical manifestation. Dr. Ingram explained the clinical progression of carpal tunnel syndrome generally. He noted that his findings on physical examination differed from those of Dr. Valentino as Dr. Valentino did not give much weight to other physicians' diagnoses or EMG testing.

A hearing was held on January 15, 2021.

By decision dated March 31, 2021, a hearing representative affirmed the September 17, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by

⁵ *Supra* note 2.

⁶ *C.K.*, Docket No. 19-1549 (issued June 30, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.⁹

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹⁰ The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or a DMA, OWCP shall appoint a third physician to make an examination.¹¹ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹²

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP referred appellant to Dr. Valentino for a second opinion evaluation and, in his August 26, 2020 report, Dr. Valentino opined that there was no evidence of a work-related injury. He explained that, based on his evaluation, appellant's symptoms were diffuse and not consistent with a specific diagnosis of bilateral carpal tunnel syndrome. As such, he could not relate any diagnosis related to her accepted factors of federal employment.

In a report dated November 19, 2020, Dr. Ingram opined that all of appellant's symptoms were directly related to her work activities and usual duties as a mail handler, culminating on February 12, 2019. He explained that the abnormalities on her physical examination included Tinel's testing, laxity of the ligaments, and decreased sensation and weakness, noting that these were signs of her neuropathic and orthopedic diagnoses. Dr. Ingram further explained that appellant performed significantly physical and repetitive work, creating a cumulative trauma to her upper extremities involving the shoulder and bilateral wrists. Performing these duties led to trauma and inflammation in her upper extremities. Dr. Ingram noted that, in the performance of duty, appellant would operate a pallet jack, typically using the controls with one hand and the other to steer, and that this action required significant repetitive physical force. Appellant had performed this task for more than 10 years. Dr. Ingram further noted that EMG testing confirmed evidence of carpal tunnel syndrome. He opined within a reasonable degree of medical certainty that duties of appellant's federal employment traumatized her wrists, leading to inflammation and compression of the median nerve at the wrist, which ultimately led to carpal tunnel syndrome in its full clinical manifestation. Dr. Ingram explained the clinical progression of carpal tunnel syndrome generally. Responding directly to Dr. Valentino, he noted that their findings on physical

⁹ *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

¹⁰ 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB 701 (2008).

¹¹ 20 C.F.R. § 10.321.

¹² *K.S.*, Docket No. 19-0082 (issued July 29, 2019); *V.G.*, 59 ECAB 635 (2008).

examination differed. Dr. Ingram noted that Dr. Valentino did not give much weight to other physicians' diagnoses or EMG testing.

The Board finds that a conflict in medical opinion has been created between Dr. Ingram, appellant's treating physician, and that of the second opinion physician regarding whether appellant sustained work-related carpal tunnel syndrome.¹³ Section 8123 of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, OWCP shall appoint a third physician who shall make an examination.¹⁴

As a conflict in medical opinion exists regarding whether appellant's diagnosed carpal tunnel syndrome is causally related to the accepted employment factors, the case must be remanded to OWCP for creation of an updated SOAF and referral to a specialist in the appropriate field of medicine to obtain an impartial medical opinion regarding whether appellant sustained bilateral carpal tunnel syndrome causally related to the accepted factors of her federal employment. Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹³ See *S.M.*, Docket No. 19-0397 (issued August 7, 2019).

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 12, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board